

BILL

No. 188

An Act to amend *The Public Guardian and Trustee Act* and to make consequential amendments to another Act

(Assented to _____)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Public Guardian and Trustee Amendment Act, 2019*.

SS 1983, c P-36.3 amended

2 *The Public Guardian and Trustee Act* is amended in the manner set forth in this Act.

Section 2 amended

3 Subsection 2(1) is amended:

(a) by adding the following clause after clause (f.1):

“(f.2) ‘**letters of administration**’ means all letters of administration of the property of a deceased person, with or without the will annexed, and whether granted for general, special or limited purposes”; and

(b) by adding the following clause after clause (h):

“(h.1) ‘**prescribed**’ means prescribed in the regulations”.

Section 3 amended

4 The following subsection is added after subsection 3(3):

“(4) The public guardian and trustee is the official administrator of estates for Saskatchewan”.

New section 6.1

5 Section 6.1 is repealed and the following substituted:

“Public guardian and trustee may be appointed as property guardian, etc.

6.1 The public guardian and trustee may be appointed:

(a) as a property guardian pursuant to *The Missing Persons and Presumption of Death Act*, subject to section 44.1;

(b) as a decision-maker pursuant to *The Adult Guardianship and Co-decision-making Act*, subject to section 44.1;

(c) as an attorney respecting the property of a person in accordance with the terms of a power of attorney, if the public guardian and trustee consents to the appointment;

- (d) as a trustee:
 - (i) by the court pursuant to this or any other Act, subject to section 44.1; or
 - (ii) in any other manner, if the public guardian and trustee consents to the appointment; or
- (e) as an executor if the public guardian and trustee consents to the appointment”.

New sections 20 to 22

6 Sections 20 to 22 are repealed and the following substituted:

“Appointment as litigation guardian or guardian of the property of an infant

20(1) With the consent of the public guardian and trustee or on the application of the public guardian and trustee made with or without notice, the court may, if it appears to the court desirable to do so:

- (a) appoint the public guardian and trustee to act as:
 - (i) litigation guardian of an infant; or
 - (ii) guardian of the property of an infant; and
- (b) specify that the appointment made pursuant to subclause (a)(i) or (ii) is limited to a particular fund or is for a special purpose.

(2) The material filed in support of an application made pursuant to subsection (1) shall consist of:

- (a) an affidavit of the public guardian and trustee; and
- (b) any other evidence that the court may require in proof of the facts.

(3) If the public guardian and trustee is appointed as litigation guardian or guardian of the property of an infant pursuant to this section, it is not necessary:

- (a) to issue letters of appointment; or
- (b) to provide any security.

“Application for dependants’ relief

21(1) The public guardian and trustee may commence an application pursuant to *The Dependants’ Relief Act, 1996* on behalf of an infant or on behalf of an adult who may lack capacity if it appears to the public guardian and trustee to be necessary or advisable or in the best interests of the infant or adult.

(2) On an application made pursuant to subsection (1), the public guardian and trustee may act as litigation guardian of the infant or adult without first obtaining a court order if:

- (a) it appears to the public guardian and trustee that no other responsible, qualified adult intends to act as litigation guardian; or
- (b) in the opinion of the public guardian and trustee, the proposed litigation guardian has interests that are adverse to those of the infant or adult.

“Applications in which interest of guardian adverse

22 On all applications pertaining to property in which an infant is interested, if the infant’s legal custodian or the guardian of the property of the infant constituted or appointed pursuant to *The Children’s Law Act, 1997* appears to the court to have an interest adverse to that of the infant:

- (a) the court may require that notice of the application be served on the public guardian and trustee; and
- (b) for the purposes of the application, the public guardian and trustee shall act as litigation guardian of the infant”.

Section 23 amended

7(1) Subsection 23(1) is amended in the portion following clause (b) by striking out “legal custodian or guardian” and substituting “infant’s legal custodian or guardian of the property of the infant constituted or appointed pursuant to *The Children’s Law Act, 1997*,”.

(2) Subsection 23(3) is amended by striking out “be guardian *ad litem*” and substituting “act as litigation guardian”.

Section 25 amended

8(1) Clause 25(1)(a) is amended by striking out “next friend” and substituting “litigation guardian”.

(2) Subsection 25(3) is repealed and the following substituted:

“(3) If the public guardian and trustee declines to review or refuses to approve a settlement pursuant to subsection (1), the legal custodian, litigation guardian, personal representative of the deceased person or the person maintaining or authorized to maintain an action pursuant to *The Fatal Accidents Act*, or the defendant:

- (a) may apply to the court requesting that the court review and issue an order confirming the settlement; and
- (b) must give the opposite party and the public guardian and trustee at least 10 days’ notice of the application made pursuant to clause (a)”.

Section 29 amended

9(1) Clause 29(2)(a) is amended by striking out “form prescribed in the regulations” and substituting “prescribed form”.

(2) Subsection 29(3) is repealed and the following substituted:

“(3) For the purposes of clause (2)(a), the public guardian and trustee shall sign under seal an acknowledgment to act if:

- (a) no person applies, appears to be interested in applying or appears to the public guardian and trustee to be suitable to apply pursuant to *The Adult Guardianship and Co-decision-making Act* to be appointed property guardian of a person with respect to whom a certificate of incapacity has been issued pursuant to this Act; and
- (b) the public guardian and trustee is of the opinion that the estate or part of the estate requires administering.

“(3.01) If, pursuant to clause (3)(b), the public guardian and trustee is of the opinion that only part of the estate requires administering, the public guardian and trustee shall set out in the acknowledgment to act any limitation on its role as property guardian”.

(3) Subsection 29(3.1) is amended by striking out “all purposes” and substituting “the purposes of subclause 19(1)(g.1)(ii) of *The Powers of Attorney Act, 2002*”.

(4) The following subsection is added after subsection 29(3.1):

“(3.2) If an acknowledgment to act has been signed under seal pursuant to subsection (3) and the public guardian and trustee is of the opinion that the estate no longer requires administering, the public guardian and trustee may revoke the acknowledgment to act”.

Section 31 amended

10 Subclause 31(1)(c)(ii) is amended by striking out “*The Intestate Succession Act, 1996*” and substituting “*The Intestate Succession Act, 2019*”.

Section 32 amended

11 Subsection 32(2) is repealed and the following substituted:

“(2) If the court directs service on the public guardian and trustee pursuant to subsection (1) and if the public guardian and trustee consents, the public guardian and trustee shall act as litigation guardian of the person alleged to lack capacity after 30 days from the date of the order made pursuant to subsection (1), unless the court directs otherwise.

“(3) If the court directs service on another person pursuant to subsection (1) and if that person consents, the person directed to be served shall act as litigation guardian of the person alleged to lack capacity from the date on which service of the court process is effected, unless the court directs otherwise”.

Section 38 amended

12(1) The following clause is added after clause 38(1)(a.1):

“(a.2) the public guardian and trustee revokes the acknowledgment to act signed pursuant to subsection 29(3)”.

(2) Subsection 38(2) is amended by adding “if requested to do so” after “guardianship”.

Section 40.1 amended

13 Subsection 40.1(2) is amended:

(a) in clause (b) by striking out “property co-decision-maker, property guardian or temporary property guardian” and substituting “personal co-decision-maker, personal guardian or temporary personal guardian”; and

(b) in clause (c) by striking out “property co-decision-maker or property guardian” and substituting “personal co-decision-maker or personal guardian”.

New section 40.4

14 Section 40.4 is repealed and the following substituted:

“Termination of authority

40.4 When the public guardian and trustee is acting as personal co-decision-maker, personal guardian or temporary personal guardian of a dependent adult, the public guardian and trustee shall cease to act on the earliest of the following dates:

- (a) the date on which the public guardian and trustee receives a copy of a court order appointing another personal co-decision-maker, personal guardian or temporary personal guardian or discharging the public guardian and trustee from acting as personal co-decision-maker, personal guardian or temporary personal guardian;
- (b) the date specified in the court order appointing the public guardian and trustee, if a date is specified;
- (c) the date on which the dependent adult dies”.

New sections 40.41 to 40.493

15 The following heading and sections are added after section 40.4:

**“PUBLIC GUARDIAN AND TRUSTEE
AS OFFICIAL ADMINISTRATOR**

“Application of sections 40.42 to 40.493

40.41 Sections 40.42 to 40.493 apply with respect to the administration of the estates of deceased persons.

“Public guardian and trustee to take possession of neglected property of deceased persons

40.42(1) If it is brought to the attention of the public guardian and trustee that a person has died and the person’s executors or next of kin have not taken possession of the person’s property, the public guardian and trustee may take possession of that property for the purpose of preserving and protecting it.

(2) Pending the grant of letters probate or letters of administration, the public guardian and trustee has all the powers of an executor or administrator with respect to the property mentioned in subsection (1).

“When letters of administration may issue to another person

40.43(1) If the public guardian and trustee receives a notice pursuant to subsection 5(1.1) of *The Administration of Estates Act*, the public guardian and trustee may:

- (a) consent to the application; or
- (b) within 30 days after receiving the notice, apply for letters of administration with respect to the property of the deceased person.

(2) If the public guardian and trustee consents to the application pursuant to clause (1)(a), the letters of administration may issue to the applicant immediately.

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- (3) When letters of administration issue to an applicant as provided in this section, the public guardian and trustee may do one or more of the following:
- (a) request the administrator to render a just and full account of the administration;
 - (b) apply to the court for an order requiring the administrator to render a just and full account of the administration;
 - (c) in the application mentioned in clause (b), question the validity of any release by or settlement with any alleged next of kin.
- (4) If the court is satisfied that it is necessary or appropriate to do so, the court, on an application pursuant to subsection (3), may revoke the administration of the administrator and grant administration to the public guardian and trustee.

“Grant of administration to public guardian and trustee

40.44(1) On the application of the public guardian and trustee, the court may grant letters of administration with respect to the property of a deceased person to the public guardian and trustee:

- (a) if no application for letters probate or letters of administration has been made within 30 days after the death of that person; or
 - (b) if letters probate or letters of administration granted to another person have been revoked.
- (2) On the application of the public guardian and trustee, the court shall grant letters of administration with respect to the property of a deceased person to the public guardian and trustee if:
- (a) the public guardian and trustee does not consent to the application mentioned in the notice sent to the public guardian and trustee pursuant to subsection 5(1.1) of *The Administration of Estates Act*;
 - (b) within 30 days after receiving the notice, the public guardian and trustee applies for letters of administration; and
 - (c) the deceased person died intestate, leaving:
 - (i) no known next of kin living in Saskatchewan; and
 - (ii) no known next of kin living elsewhere who can be readily communicated with.
- (3) Letters of administration granted to the public guardian and trustee pursuant to this section may be revoked on the application of:
- (a) any executor applying for letters probate; or
 - (b) any next of kin or any domiciliary executor or administrator of the deceased applying for letters of administration.
- (4) Subject to subsection (5), after the expiration of 2 years from the date of the grant of letters of administration to the public guardian and trustee pursuant to this section, any person who is interested in the estate as beneficiary or creditor may require the public guardian and trustee to pass the accounts of the administration before the court.
- (5) Subsection (4) does not apply to an estate if the value of the estate does not exceed the amount prescribed for the purposes of subsection 40.47(1).

“No security by public guardian and trustee

40.45 The public guardian and trustee is not required to provide security as administrator of any estate.

“Public guardian and trustee required to act

40.46(1) After the expiry of 30 days from the death of a person who leaves property, any person who is interested in the estate may, by written notice, request that the public guardian and trustee apply for letters of administration.

(2) On receiving notice pursuant to subsection (1) and if the public guardian and trustee is of the opinion that the estate of the deceased person requires administering and that there is no other person who is capable of administering the estate, the public guardian and trustee:

(a) may request that the person who gave the notice provide a deposit to cover the fees and expenses of the public guardian and trustee; and

(b) shall apply for letters of administration if the deposit requested pursuant to clause (a) is paid.

(3) On an application by the public guardian and trustee pursuant to subsection (2), the court may require a person who gave notice pursuant to subsection (1) to deposit with the public guardian and trustee an amount that the court considers sufficient to cover the fees and expenses of the public guardian and trustee.

(4) Notwithstanding subsections (1) and (2), the public guardian and trustee is not required to apply for letters of administration if the value of the estate of the deceased person does not exceed the amount prescribed for the purposes of subsection 40.47(1).

“When letters of administration not required

40.47(1) Notwithstanding sections 40.44 and 40.46, the public guardian and trustee is not required to apply for letters of administration if the value of the estate of the deceased person does not exceed the prescribed amount.

(2) In the circumstance described in subsection (1), the public guardian and trustee has the same power and authority to administer the estate as if the court had granted letters of administration to the public guardian and trustee, and may do any of the following:

(a) arrange the funeral of the deceased person;

(b) make an inventory of, take possession of, and safeguard and dispose of the property of the deceased person;

(c) pay the debts of the deceased person;

(d) settle or compromise a debt or claim asserted by or against the deceased person;

(e) distribute any remaining property of the deceased person in accordance with the law;

(f) do any other thing that the public guardian and trustee considers necessary to administer the deceased person’s estate.

“Claims on estates administered by public guardian and trustee

40.48(1) This section applies if the estate of a deceased person is administered by the public guardian and trustee.

(2) If a person claims to be entitled to the estate of a deceased person, an interest in the estate, or part of the proceeds of the estate, that person may apply to the court for an order declaring the person’s rights with respect to the estate.

(3) On an application pursuant to subsection (2), the court may direct such inquiries as may be necessary to determine the rights of the person with respect to the estate, and may make an order determining those rights.

(4) The court shall not direct the public guardian and trustee to make inquiries pursuant to subsection (3) unless security for fees and expenses is given by the applicant, if security is requested by the public guardian and trustee.

“Compensation agreements

40.49(1) In this section:

‘beneficiary’ includes the following persons:

- (a) a person claiming to be a beneficiary;
- (b) an executor, administrator or beneficiary of a beneficiary;

‘compensation’ means compensation for services provided pursuant to a compensation agreement or the payment of fees and expenses relating to those services, and includes legal fees;

‘compensation agreement’ means an agreement with a beneficiary of an estate to which this section applies that provides for compensation, directly or indirectly, to one or more persons or entities on the location, recovery or distribution of any interest in the estate to which the beneficiary is or may be entitled, and includes an agreement for such compensation that is in the form of a power of attorney.

(2) This section applies with respect to the estate of a deceased person if the public guardian and trustee:

- (a) is conducting an investigation with respect to the estate;
- (b) has applied for letters of administration with respect to the estate; or
- (c) has been granted letters of administration with respect to the estate.

(3) A person who intends to rely on a compensation agreement for the purposes of this Act shall give the original compensation agreement to the public guardian and trustee.

(4) A compensation agreement is not enforceable unless:

- (a) it provides for compensation of not more than 10% of the distributable value of the interest in the estate to which the beneficiary is or may be entitled;
- (b) it sets out the services to be provided to or on behalf of the beneficiary pursuant to the compensation agreement;

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- (c) it contains the following statements and information:
- (i) that the public guardian and trustee is administering or considering administering the estate named in the compensation agreement;
 - (ii) that the beneficiary does not need to sign the compensation agreement in order to claim the beneficiary's interest in the estate from the public guardian and trustee;
 - (iii) that the beneficiary may contact the public guardian and trustee directly regarding the estate or the beneficiary's interest in the estate, and the current contact information for the public guardian and trustee must be included as part of this statement;
 - (iv) that the beneficiary may wish to obtain independent legal advice before signing the compensation agreement;
- (d) it is signed by:
- (i) the beneficiary; and
 - (ii) a person who witnessed the signing by the beneficiary and who is neither a party to the compensation agreement nor an employee or agent of a party to the compensation agreement; and
- (e) it meets all additional requirements that may be prescribed.
- (5) Despite the existence of a compensation agreement, the public guardian and trustee may pay all or any part of the estate to which the beneficiary is entitled directly to the beneficiary if:
- (a) the compensation agreement is not given to the public guardian and trustee as required pursuant to subsection (3);
 - (b) the compensation agreement does not meet the requirements set out in subsection (4); or
 - (c) the public guardian and trustee receives information indicating that a term or condition set out in a compensation agreement has been breached.
- (6) Nothing in this section prevents a beneficiary from asserting at any time that the compensation payable pursuant to a compensation agreement to which the beneficiary is a party is excessive or unjust.
- (7) This section only applies with respect to compensation agreements that are entered into on or after the date on which this section comes into force.

“Fees of public guardian and trustee

40.491(1) The public guardian and trustee is entitled to the prescribed fees and expenses for the administration of the estate of a deceased person, and section 49.2 applies with any necessary modification.

(2) On the application of any person interested in the estate, made without notice or on any notice that the court may direct, the court may increase or decrease the amount of the fees and expenses to be paid to the public guardian and trustee.

“Common fund

40.492 The public guardian and trustee may place money received by the public guardian and trustee in the administration of the estate of a deceased person in the common fund mentioned in section 47.

“Unclaimed assets

40.493(1) Money realized from the estate of a deceased person that is administered by the public guardian and trustee and that is not claimed within 6 years after the person’s death may be paid into the general revenue fund.

(2) After giving any notice that the public guardian and trustee considers expedient and notwithstanding that the six-year period mentioned in subsection (1) has not elapsed, the public guardian and trustee may pay any unclaimed money, or any part of it, or assign any unclaimed personal property, in accordance with any direction of the Lieutenant Governor in Council made pursuant to section 4 of *The Escheats Act*.

(3) Any interest in real property in the estate of a deceased person that is administered by the public guardian and trustee and that is not claimed within 6 years after the person’s death may be escheated to the Crown”.

Section 40.6 amended

16(1) The following subsection is added after subsection 40.6(1):

“(1.1) On notice to the financial institution, the public guardian and trustee may renew the suspension mentioned in subsection (1) for additional periods of 30 days if the public guardian and trustee is of the opinion that it is appropriate to do so”.

(2) Subsection 40.6(2) is amended by striking out “subsection (1)” and substituting “this section”.

Section 42 amended

17 Subsections 42(1) and (2) are repealed.

Section 43 amended

18 Subsection 43(1) is amended in the portion following clause (b) by striking out “and it appears that the estate of that person, if deceased, would escheat to the Crown for lack of heirs”.

Section 45 amended

19 Subsection 45(1) is amended by adding “or of any deceased person for whom the public guardian and trustee is executor or administrator of the estate” after “property guardian”.

Section 47 amended

20(1) Subsection 47(1) is amended:

(a) in the portion preceding clause (a) by striking out “The public guardian and trustee” and substituting “Subject to sections 40.492 and 48, the public guardian and trustee”; and

(b) in clause (b) by striking out “the approval of the Investment Board” and substituting “section 47.1”.

(2) Subsection 47(2) is amended:

(a) in the portion preceding clause (a) by striking out “manner prescribed in the regulations” and substituting “prescribed manner”; and

(b) by repealing clause (b) and substituting the following:

“(b) prescribed gains or losses”.

New section 48**21 Section 48 is repealed and the following substituted:****“Separate investments by the public guardian and trustee**

48(1) Subject to subsection (2), the public guardian and trustee may make investments separate from the common fund in the name of a person for whom the public guardian and trustee holds funds if:

- (a) in the public guardian and trustee’s opinion:
 - (i) the funds are not immediately required for the individual; and
 - (ii) the separate investment is in the best interests of the individual; and
- (b) the separate investment is of a kind permitted to be made by trustees pursuant to *The Trustee Act, 2009*.

(2) If the public guardian and trustee holds funds on behalf of an infant, the legal custodian or person responsible for the care of the infant must consent to the public guardian and trustee making the separate investment for the infant”.

Section 49 amended

22(1) Subsection 49(1) is amended by adding “or the estate of a deceased person” after “dependent adult”.

(2) Subsections 49(2) and (3) are repealed and the following substituted:

“(2) If the public guardian and trustee has acted in a proceeding as property guardian of a dependent adult and the dependent adult is awarded costs of the proceeding, the public guardian and trustee is entitled to the costs awarded to the dependent adult for the purpose of defraying the expenses of the public guardian and trustee.

“(2.1) If the public guardian and trustee has acted in a proceeding as executor or administrator of a deceased person’s estate and the estate is awarded costs of the proceeding, the public guardian and trustee is entitled to the costs awarded to the estate for the purpose of defraying the expenses of the public guardian and trustee.

“(3) If the public guardian and trustee has acted in a proceeding as litigation guardian of an infant and the infant is awarded costs of the proceeding, the public guardian and trustee is entitled to the costs awarded to the infant for the purpose of defraying the expenses of the public guardian and trustee”.

Section 49.2 amended

23 Subsection 49.2(1) is amended by striking out “fee prescribed in the regulations” and substituting “prescribed fee”.

New section 50**24 Section 50 is repealed and the following substituted:****“Immunity**

50 No action or proceeding lies or shall be commenced against the minister, the Public Guardian and Trustee of Saskatchewan, the Government of Saskatchewan, or any employee or agent of the Government of Saskatchewan for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them pursuant to or in the exercise or supposed exercise of any power conferred on them, or in the carrying out or supposed carrying out of any duty imposed on them, in relation to the Public Guardian and Trustee of Saskatchewan by this Act or any other Act or any regulations”.

New section 54**25 Section 54 is repealed and the following substituted:****“Regulations**

54 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing the amounts that may be paid pursuant to subsection 17(1);
- (c) prescribing the form of acknowledgement to act mentioned in section 29;
- (d) prescribing an amount for the purposes of subsection 40.47(1);
- (e) prescribing additional requirements respecting compensation agreements for the purposes of clause 40.49(4)(e);
- (f) with respect to review panels:
 - (i) conferring on review panels any ancillary powers that are considered advisable for carrying out their functions pursuant to this Act; and
 - (ii) regulating practice and procedure before review panels;
- (g) prescribing the manner in which the public guardian and trustee shall dispose of:
 - (i) interest paid or payable by a bank with respect to moneys deposited in the common fund pursuant to section 47; and
 - (ii) moneys derived from investments made pursuant to section 47;
- (h) prescribing the time and manner of settlement of accounts;
- (i) prescribing the manner in which any gains or losses are to be dealt with resulting from the difference between the cost and selling price of common fund investments when sold;
- (j) prescribing the payments that may be made by the public guardian and trustee from the current account;
- (k) prescribing the fees payable to the public guardian and trustee for services performed pursuant to this Act;
- (l) prescribing any matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (m) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act”.

RSS 1978, c T-2, section 25 amended

26(1) Section 25 of *The Tax Enforcement Act* is amended in the manner set forth in this section.

(2) Subsection (1) is amended in the portion following clause (b) by striking out “official administrator” and substituting “public guardian and trustee”.

(3) Subsection (2) is amended by striking out “official administrator” and substituting “public guardian and trustee”.

(4) Subsection (5) is repealed and the following substituted:

“(5) If a notice is received by the Registrar of Titles pursuant to section 57 of *The Adult Guardianship and Co-decision-making Act* or section 35 of *The Public Guardian and Trustee Act* in relation to a person required to be served by this Act, service shall be made on the property decision-maker or on the public guardian and trustee, as the case may be”.

Coming into force

27 This Act comes into force by order of the Lieutenant Governor in Council.

FOURTH SESSION

Twenty-eighth Legislature

SASKATCHEWAN

B I L L

No. 188

An Act to amend *The Public Guardian and Trustee Act*
and to make consequential amendments to
another Act

Received and read the

First time

Second time

Third time

And passed

Honourable Don Morgan
